IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

D.B. CIVIL WRIT PETITION (PIL)NO.4423/2007

Vishna Ram & Ors.
Vs.
State of Rajasthan & Ors.

Date of Order :: 27-07-2007

:: PRESENT ::

HON'BLE THE ACTING CHIEF JUSTICE SHRI J.M. PANCHAL
HON'BLE SHRI JUSTICE BHANWAROO KHAN

Mr. Anuj Kala, for the petitioners.

PER HON'BLE THE ACTING CHIEF JUSTICE J.M. PANCHAL

By filing the instant public interest litigation petition under Article 226 of the Constitution, the petitioners who are residents of village Shivpuri-Lohawat, Tehsil Phalodi, District Jodhpur have prayed that order dated August 9, 2002 and consequential order dated September 9,2002 passed by the respondent no.5 allotting pattas be set aside ad respondents be restrained from proceeding further in the matter of those orders.

In village Shivpuri-Lohawat, Tehsil Phalodi, district Jodhpur, a Gair Mumkin Nadi named 'Maatwali Nadi' admeasuring 20 bighas and 5 biswas is situated. The case of the petitioners is that

catchment area of this Nadi is covered by Khasra no.2498 measuring 100 bighas and 7 biswas. The grievance made by the petitioners is that the Panchayat made a request to the Government to grant 15 bighas of land out of Khasra no.2498 for the purpose of constructing residential houses and for that the Government has granted its approval not only for conversion of the use of land but allotted 15 bighas of catchment area of Nadi which is contrary to the provisions. Under the circumstances, the petitioners have filed the instant petition and claimed relief to which reference is made earlier.

This Court has heard Mr. Anuj Kala, learned counsel for the petitioners and also considered the documents forming part of the petition.

From the record of the case, it is evident that the petitioners had filed D.B. Civil Writ Petition no.3078/2005 challenging the order of the District Collector, Jodhpur which is challenged in the instant petition. Division Bench of this Court had dismissed the writ petition by a speaking order. After disposal of the writ petition, the petitioner had approached an expert and obtain a report on 'Matvali Talab'. After obtaining the report, the petitioners had filed Special Leave Petition no.5930/2006 before the Supreme Court. Before the

Supreme Court, the report obtained by the petitioners was relied upon. The Supreme Court was of the view that the report should be placed before the High Court for its consideration. Accordingly, while disposing of the SLP, the Supreme Court granted liberty to the petitioners to approach the High Court. That is how, the petitioners have filed the instant petition.

As it is admitted by the petitioners that after disposal of the petition by this Court, the petitioners had obtained a report from so called expert. The report obtained by the petitioners for serve their purpose after disposal of the petition, does not inspire to this Court. Further what is allotted by the State Government to the Panchayat is the land admeasuring 15 bighas from Khasra no.2498 which according to the petitioners is catchment area of the point situated in village Shivpuri. The report does not indicate that by allotment of 15 bighas of land, the inflow of water of the point would be adversely affected.

What is relevant to notice is that it is not the case of the petitioners that Khasra no.2498 which is catchment area for the point in question is Gair Mumkin. Having regard to the facts of the case, the land is going to be used for the purpose of setting up residential colony for the villagers

which is also a public purpose. While disposing of the earlier writ petition filed by the petitioners, following observations were made by the Division Bench of this Court:

> "In course of hearing, photographs of structure standing on parts of the land in the vicinity were produced by the respondents from which it appears that the land allotted to the panchayat is at a considerable distance from the catchment area. We do not think that the use of the land for habitation purpose would affect the water source of the pond.
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> On behalf of the respondent, it was submitted that petitioner no.2 Jora Ram had contested election for Sarpanch of Gram Panchayat which he lost, the present petition is the out come of the election."

The above quoted paragraph would indicate that the bonafide of the petitioners in filing the instant petition is in doubt. It is stated in ground no.3 of the memorandum of the instant petition that in the same village the another vacant land is available in Khasra no.2573 which was sanctioned for the expansion of Abadi purposes by the former Sarpanch. This would indicate that the Panchayat will have to pay a handsome amount for the purpose of putting a residential colony for the villagers which cannot be regarded in the interest of villagers.

On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the petitioners to set aside

the orders which came to be passed way back on August 9, 2002 and September 9, 2002 and allot the lands to the Panchayat for the purpose of using the same for establishing residential colony for the villagers.

The writ petition which has no substance therefore, deserves to be summarily dismissed.

For the foregoing reasons, the petition fails and is summarily dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],ACTG.CJ.

Praveen